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Franco Yáñez, Clara

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Clara Franco Yáñez
Doctoral Researcher
clara.franco@giga-hamburg.de

German Institute for Global and Area Studies (GIGA)
Leibniz-Institut für Globale und Regionale Studien
Neuer Jungfernstieg 21
20354 Hamburg

www.giga-hamburg.de/en/publications/giga-focus/

Clara Franco Yáñez

Abortion Rights in Latin America: An Unsettled Battle

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Despite feminist movements' many steps forward in Latin America, abortion rights remain an issue where political clashes continue. While other equal rights advances have been attained without any subsequent "rolling back," abortion rights have exhibited a pendular back-and-forth dynamic in many countries of the region. They often become a high-profile public issue in polarised political contexts. This also affects the work of NGOs and development agencies.

- Abortion rights are one of the most polarising and politically contentious issues in the Americas today, and one that is often aligned with left-wing (pro-liberalisation) and right-wing (pro-prohibition) positions. National and transnational advocacy on both sides has intensified, with little room left for meaningful dialogue.
- Latin American and Caribbean countries exhibit some of the world's harshest and most prohibitive abortion laws.
- The legal status of abortion varies widely within the region, and pressure to change this status arises frequently. Argentina, Chile, Dominican Republic, and Mexico have all seen significant legal changes related to abortion in the last five years. While Chile and Argentina have taken steps towards legalisation, an attempt to legalise abortion in the Dominican Republic – only when there is a risk to the woman's life – is still pending Congress approval. Mexico's federal system has seen some states toughen abortion restrictions, while only one state has moved in the opposite direction.
- While particular religious organisations constitute the core pressure group for restricting abortion rights, calls for liberalisation have received broad support among urban and secular sectors of society.
- The pendular character of abortion rights can be expected to continue as part of the frequent left and right swings on the continent.

Policy Implications

Institutions and NGOs working in the field of reproductive rights face an ever-changing legal environment, which poses major threats to their activities. Especially those organisations dependent on US funding frequently suffer from the so-called "global gag rule," which is enacted or repealed depending on the party in power in Washington, as it prohibits aid or partnerships with institutions that promote abortion rights.

Decades of Controversy

The practice of voluntarily interrupting a pregnancy has long been controversial. Where socially conservative, traditional mindsets persist, abortion remains one of the most contentious topics in sociopolitical life. We see this acutely in Latin America and the Caribbean. Legal prohibitions on abortion, however, do not keep abortions from happening. Instead, an abortion often becomes an illegal and risky procedure which puts the woman's life, health, or future fertility at risk. Research data from the United Nations Population Fund (UNFPA) and the World Health Organization (WHO) suggests that illegalising abortion does little to actually prevent abortions (Shah, Ahman, and Ortayli 2014; WHO 2012: 87–90).

A closer analysis of the legal landscape of abortion (throughout the world in general and the Americas in particular) shows that the issue cannot be simplified into abortion merely being “legal” or “illegal.” Instead, we find laws with various nuances, including differentiated sanctions depending on context and circumstances (or differentiated between the woman and the personnel carrying out the abortion), or general prohibitions with exceptions. These exceptions to abortion bans are often called “*causales*” (causes) in the Spanish-speaking world. The three most common such exceptions are risks to the mother's life if the pregnancy is continued, fatal abnormalities in the unborn child, or pregnancy as a result of rape.

Other, less common exceptions are pregnancy as a result of incest, risks to the mother's “health” more broadly (which can include mental health); impairments in the unborn child, even if they are not fatal; or other “broad socio-economic grounds.” Similarly, where abortion is legal, it overwhelmingly tends to be subject to restrictions and regulations, most often gestational limits of approximately 12 to 16 weeks (i.e. how advanced the pregnancy is, counted in weeks).

Mapping the Current Legal Status

Building on the Center for Reproductive Rights' “World Abortion Laws Map,” Table 1 shows the current legal status of abortion in the countries of Latin America and the Caribbean (Center for Reproductive Rights 1992–2021). It also includes the date when the most recent legislative change occurred (where such data is available).

Country	Current Abortion Status	Year of most recent legal change ⁽ⁱ⁾
Mexico	Legal only in Mexico City and Oaxaca until 12 weeks; illegal everywhere else, with exceptions varying by state (Federal system, each state can determine its exceptions).	2019
Guatemala	Illegal, except to save the woman's life	
Belize	Illegal, except in cases of foetal impairment or "broad social and economic grounds"	
El Salvador	Illegal with no exceptions	1997
Honduras	Illegal with no exceptions	
Nicaragua	Illegal with no exceptions	2007
Costa Rica	Illegal, except to preserve health	
Panama	Illegal, except for the three most common "causales"	
Cuba	Legal until 12 weeks	
Jamaica	Illegal with no exceptions	
Haiti	Illegal with no exceptions	
Bahamas	Illegal, except to preserve health	
Dominican Republic	Illegal with no exceptions (As of April 2021, discussing legalisation only to save the woman's life).	
Saint Kitts and Nevis	Illegal, except to preserve health	
Antigua and Barbuda	Illegal, except to save the woman's life	
Dominica	Illegal, except to save the woman's life	
Saint Lucia	Illegal, except in cases of rape, incest, preservation of health (including mental health)	
Saint Vincent and the Grenadines	Illegal, except in cases of rape, incest, foetal impairment, and "broad social and economic grounds".	
Barbados	Illegal, except cases of rape, incest, foetal impairment, or "broad social and economic grounds"	
Grenada	Illegal, except to preserve health	
Trinidad and Tobago	Illegal, except to preserve health	
Colombia	Illegal, except for the three most common "causales"	2006
Venezuela	Illegal, except to save the woman's life	
Suriname	Illegal with no exceptions	
Ecuador	Illegal, except to preserve health	2019
Brazil	Illegal, except to save the woman's life or in cases of rape	
Peru	Illegal, except to preserve health	
Bolivia	Illegal, except in cases of rape, incest or to preserve health (including mental health)	
Paraguay	Illegal, except to save the woman's life	
Uruguay	Legal until 12 weeks	2012
Argentina	Legal until 14 weeks	2020
Chile	Illegal except for the three most common "causales"	2017

Table 1
Legal Status of
Abortion in Latin
American and
Caribbean States

(i): If space is left blank, the current laws have been in place since before 1990.

Source: Center for Reproductive Rights (1992–2021).

This map also shows where Latin American and Caribbean countries' legislation stands with regard to abortion:



Figure 1
Abortion Laws in
Latin America

*Source: Center for
Reproductive Rights
(1992–2021).*

A Clash of Stakeholders

Diverse stakeholders throughout the region are engaged in advocacy either for or against the legalisation of abortion, often with clear policy change and legislative objectives. These stakeholders range from religious groups and political parties to governmental and non-governmental organisations, as well as prominent individuals from all walks of life. Religious groups in particular do not shy away from trying to influence debates, opinions, and votes, using abortion as a cornerstone of their discourse on family, gender roles, social life, and political activity. While the Catholic Church has always been a bulwark of anti-abortion policies, the rise of evangeli-

cal religions has given a new and aggressive boost to campaigns for more restrictive legislation.

In Mexico, Argentina, and Chile, for example, there has been at least one public demonstration every year for the past decade (usually around 8 March, which is International Women's Day) with legal and accessible abortion as one of the common demands. But this has often also brought counter-protesters demonstrating against abortion, often encouraged by religious organisations, to the streets.

Important political figures and international NGOs have also played an active role in placing the topic on social and political agendas at the local, national, and transnational levels. They advocate for various possibilities on a spectrum that ranges from complete liberalisation to a total ban and the penalisation of abortion, with various nuances in between. Throughout the Americas, advocates opposing legal abortion call themselves "pro-life" and tend to identify with the political right and with a religion (especially Catholicism and evangelicalism); whereas those defending the legality of abortion generally call themselves "pro-choice" [1] and tend to align with leftist policies as well as feminist groups.

These two groups (who indeed see and present themselves as two opposed groups) clash with each other via parallel protests in the streets; opposing proposals for legal reform, which are presented with some regularity; and their support for political candidates who promise further changes to abortion legislation (or conversely, who promise to maintain the status quo). Local chapters of the International Planned Parenthood Federation (IPPF) – with diverse local names throughout the region – feminist groups, and the numerous national chapters of the Catholics for Choice organisation (Católicas por el Derecho a Decidir) advocate across the continent for the liberalisation of abortion laws. On the other side are numerous "pro-life" advocacy groups, most of them tied to religious institutions. During his 2018 campaign, current Brazilian president Jair Bolsonaro stated numerous times that he would "veto any attempt to legalize abortion" (EuropaPress International 2018).

In public protests and media debates, it is possible to identify a strong tendency towards moral reductionism: both sides attempt to summarise their ideas in extremely simplistic and context-devoid manners, using emotionally charged terms such as: "Killing babies is wrong, period," or "We will never allow this in Chile/Brazil/El Salvador, here we protect children and the family." Those pushing for more liberal abortion laws have not been exempt from such moral reductionism and "sloganism" and have also attempted to capture what is an enormously complex issue in short catchphrases: "My body, my rights," "If I give birth, I decide," or "Stop the rosaries in my ovaries!" Although simplification is a common way of conveying messages in a protest, the framing of the issue in this case is often highly inaccurate, with inflammatory words or examples of extreme cases exploited in an attempt to generate an emotional response followed by engagement with the issue. As is often the case with contentious topics, the depiction of the ideological opponents as a caricature of their most extreme representatives is a simplistic strategy commonly used by both sides in the abortion debate.

The two groups often have irreconcilable worldviews, and abortion thus represents a symbolic battlefield among a larger set of values. The differences cover a range of social norms regarding gender roles, religious ideas and paradigms on morality, principles about women's agency over their own bodies, rules about what

1 In the Spanish language, advocates in favour of legalising abortion tend not to use a direct translation of the term "pro-choice," but rather are more divided between calling themselves "pro-abortion," "in favour of abortion," or "pro-decriminalisation" (*pro-despenalización*), with the latter term carrying less stigma.

constitutes acceptable sexual behaviour, the legitimacy of individual reproductive choices, and philosophical views about the point at which “life” begins. Rather than entering into dialogue, both groups appear to be drifting further and further apart, galvanising their ideas into strong demands – often faith-based beliefs – that appeal to fundamental principles.

Transnational Advocacy Alliances

Although the issue of abortion itself is quite nuanced, the discourses seen in protests, both online and offline, are not. Through the use of digital media, advocacy for and against abortion has increasingly become transnational: NGOs and groups of advocates on both sides of the debate seek and create alliances with other advocates abroad and with “sister” or “parent” organisations in other countries (Ginella et al. 2017).

This transnationalisation was made clear in 2018, when Argentina was at the epicentre of protests and debates as Congress debated legalising abortion. Advocates on both sides of the controversy took to the streets in massive protests, simplifying their positions into uniformly coloured bandanas or handkerchiefs (blue for “pro-life” and green for “pro-choice”). These handkerchiefs and corresponding colours were taken as a signifier across the rest of the continent. Today, from Mexico all the way to Chile, on Twitter and in the streets, bandanas identical to those worn in Argentina are used as a personal flag to signal a clear-cut position within the abortion debate.

Paradoxically, most of the activists concerned with abortion who have some degree of expertise on the matter have opinions that fall somewhere between absolute prohibition and absolute permissiveness, with only a few vocal minorities at either extreme. Surveys on the issue show that when pressed to give a more detailed answer, most people have nuanced opinions, also within a range of possibilities (Navarrete and Ramírez 2021). Activists themselves often seem to forget this nuance, rooting their activism in a dichotomous “us versus them,” “good team/bad team” take on the issue. The simplification of the debate into short “tweets,” and effectively into two different colours of clothing accessories, seemingly makes the issue clear-cut. And despite the potential overlap that could exist between their worldviews – for example, much of the “pro-life” camp at least agrees with the “pro-choicers” that the idea should not be to punish women and often also agrees that the state should provide support for vulnerable single mothers – polarisation online and offline has increasingly made it harder to compromise and find common ground. This parting of ways is likely to intensify as politics within the region become increasingly polarised and the potential common ground is forgotten.

The influence of the United States on this issue cannot be overlooked. In North America abortion is highly controversial as well, especially for religious Christian groups and for politically active evangelicals in particular. Latin America has historically been influenced politically, economically, and socially by the USA; this is also the case in the realm of NGOs, development aid, and civil society actors, who exchange information with institutions and advocates from the USA. Examples include the linkages between the US-based Catholics for Choice and its Latin American chapters, *Católicas por el Derecho a Decidir*, or *Pro-Vida* in Mexico and

American “pro-life” organisations. The US-based International Planned Parenthood Federation has a strong presence in the region, both through its own local offices and its financial support for local institutions that provide contraceptives, family planning services, tests and screenings for reproductive health, and abortion where it is allowed. Similar services are provided by the UK-based organisation Marie Stopes International in Mexico and Bolivia.

The most crucial aspect of US influence, however, is the back-and-forth enactment and repeal of the so-called “global gag rule.” This is a restriction on the provision of abortion services – or indeed even abortion information – by institutions that are recipients of US financial aid (often but not exclusively through USAID, the US government’s development aid agency). The rule is, almost as a matter of routine, reinstated whenever a Republican government is in office and withdrawn when a Democrat governs in the White House. This has happened without exception under every US administration since the “gag rule” was brought into existence in 1984. It is also called the “Mexico City policy,” because it was created within the framework of the UN International Conference on Population and Development (ICPD), which took place in Mexico City. Also notably, the repeal or reinstatement of the gag rule typically occurs as a “done on Day One of his mandate” kind of change, signifying the importance of abortion as a political signal (Marie Stopes International 2017).

Some still assume that “pro-life” groups in Latin America are comprised mostly of conservative people from generational cohorts over 40 years of age, or that women traditionally have little agency or less active voices. This is, however, inaccurate these days: across Latin America, churches and other traditional groups now manage to mobilise large groups of young people as part of their anti-abortion protests, and women are a strong and growing presence in “pro-life” advocacy groups.

A Back-and-Forth Pendulum

Thus, in quite a remarkable way, abortion is a political flashpoint in the United States and in Latin America, where it has become almost a political tradition that right-leaning governments attempt to restrict access while left-leaning governments aim to liberalise access, like a constant pendulum swinging back and forth. Unlike other issues where vulnerable groups progressively attain rights or social advancements without further mobilisation for “roll-backs,” abortion exhibits this peculiarity of constant change. As a consequence, throughout the region any agreement on legal abortion has a “temporary” feel to it, as though it is subject to change at the next gust of opposing political winds. The fickle nature of abortion laws in the region often affects the provision of services by national and international NGOs and development aid agencies.

Not only does the legal status of abortion within the region vary significantly, but attempts to change this legal status are also constant. Reform projects pushing for more permissive laws are represented throughout Latin America (although many end up being rejected by the congresses), and both these and the more prohibitive abortion laws are regularly challenged in courts. In Mexico (where abortion is under the jurisdiction of subnational politics), the liberalisation of abortion in Mexico City in 2007 led the National Commission of Human Rights to challenge

the decision in the country's Supreme Court (Olivares, Muñoz, and Sevin 2007). Similar challenges are common throughout the region: in Nicaragua, the full ban instituted in 2006 was challenged at the Supreme Court in 2008 – to no avail (Human Rights Watch 2017). The Inter-American Court on Human Rights (IACHR) has condemned absolute prohibitions like that of El Salvador. This added fuel to the debate, as the court's ruling was framed as an infringement on national sovereignty (Deutsche Welle 2021). Against this backdrop, legal changes in any direction appear fragile and temporary.

The following countries have all experienced important changes (or the initiation of reform projects) in their abortion-related laws in the last five years:

- In April 2021 in the Dominican Republic, a legal reform that would change the law from a full abortion ban with no exceptions to allowing abortion only in cases of risk to the mother's life was approved in a first reading by the lower chamber of Congress. At the time of writing, Senate approval is still pending (Human Rights Watch 2021).
- In December 2020, Argentina liberalised access to abortion. A previous, unsuccessful attempt, which ignited region-wide protests on both sides, was presented in 2018.
- In 2019, the state of Oaxaca in Mexico liberalised access to abortion, joining Mexico City as the only other state with liberalised access (since 2007). At the subnational level, legal reforms are presented regularly in Mexico, and most other Mexican states have banned abortion at some point since 2007.
- In 2019, Ecuador began to permit abortion in cases of rape (fully approved only in April 2021).
- In 2017, Chile's law shifted from a total ban with no exceptions to accepting legal abortion in the case of the three most common "*causales*": rape, risk to the woman's life, and fatal abnormalities in the unborn child.

If we go further back than five years, we see more changes: Nicaragua fully banned abortion in 2006 with no exceptions, while Uruguay liberalised access in 2012. Brazil experienced a similar debate in 2012 and the courts decided to keep abortion illegal. The full ban in El Salvador came into effect in 2007, and Colombia decriminalised only the three common "*causales*" in 2006. Such legislative oscillation can be expected to continue throughout the region.

The case can also be made to "watch for federalism" in countries that have laws that vary at the subnational level, such as Mexico and Argentina. In these countries, national laws establish a basic common ground, but regulations at the subnational level are the final determining factor of what is accepted or prohibited, or of what policies are actually meaningful in practice and are not merely legal principles. Access to abortion is largely determined at the subnational level.

With respect to meaningful access, therefore, the most crucial laws delineating the legality of abortion are not those at the national level but rather at the subnational level, as well as the reforms permitting or prohibiting the passing of more regulations. In Mexico, such blocking attempts are called "*blindajes*" ("armouring," as in "to armour" the local constitution against pro-abortion legislative reforms) – for example, all the reforms made over the past decade at the level of the subnational constitutions (in Mexico, each state or "*estado*" has its own constitution, as well as its own subnational criminal code). The articles in these constitutions have been

amended to “protect life from the moment of conception” in an attempt to block any decriminalisation of abortion in the criminal codes or in other regulations.

What NGOs Can Expect

In these shifting contexts and given the uncertain legal situation, NGOs, development agencies, or institutions that deal with women’s reproductive rights including abortion (or even controversial contraception options such as the “morning-after pill”) may face serious problems in their operations and financing, as well as their opportunities for partnerships or government support. In areas where abortion rights become the target of aggressive campaigns by religious and conservative groups, such organisations may face hostility.

A notorious case has been that of the organisation “Women on Waves,” which provides abortion services by sending boats with medical personnel into international waters, just off the coasts of countries where it is prohibited. When such a vessel recently stopped near Guatemala, the Guatemalan courts issued a prohibition and the Guatemalan army announced its intention to impede the boat’s operations, after which the boat abandoned any procedures with Guatemalan women (Feliciano 2017).

In this as in other cases, the uncertain legal situation can threaten the activities of local or international organisations. This is already the case for many NGOs and aid agencies linked with the USA because of the aforementioned gag rule, which was expanded in scope under President Trump and repealed by President Joe Biden in January 2021. The gag rule also limits opportunities for NGOs to create partnerships with organisations that might provide or “promote” abortion, as USAID forces local agencies to sign refusals to provide or associate with anyone providing abortion services whenever the gag rule is reinstated. For such organisations, every change of administration in the USA thus means a renewed battle for funding, as well as a huge – and recurring – shift in their opportunities to secure funding, partnerships, and operational capacity.

Abortion rights remain a high-profile legal issue in Latin America and the Caribbean. Even if US pressure on NGOs operating in the region decreases under President Biden, European NGOs and development aid agencies are likely to face disruptions in their work with local partners as policy swings in the region continue.

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About the Author

Clara Franco Yáñez is a doctoral researcher at the GIGA Institute for Latin American Studies and the University of Hamburg. She holds a BA in International Business from the Monterrey Institute of Technology (ITESM) in Mexico and an MA in International Affairs from the Graduate Institute of International and Development Studies in Geneva, Switzerland. Her current research interests include human rights, gender, abortion-related laws, and global health.

clara.franco@giga-hamburg.de,

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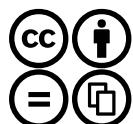
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GIGA | Neuer Jungfernstieg 21

20354 Hamburg

www.giga-hamburg.de/en/publications/giga-focus/

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